

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**UNITED STATES OF AMERICA**  
Plaintiff,

v.

**Case No. 05-CR-213**

**KENNETH BEVERLY**  
Defendant.

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**ORDER**

Defendant Kenneth Beverly seeks re-sentencing pursuant to 18 U.S.C. § 3582(c)(2) based on the Sentencing Commission's recent amendments to the crack and criminal history sentencing guidelines. However, eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in U.S.S.G. § 1B1.10(c) that lowers the applicable guideline range. U.S.S.G. § 1B1.10 cmt. n.1. The Sentencing Commission has not yet determined whether the new guidelines will be applied retroactively under § 1B1.10(c). Defendant's motion is thus pre-mature.

**THEREFORE, IT IS ORDERED** that defendant's motion (R. 224) is **DENIED** without prejudice.

Dated at Milwaukee, Wisconsin, this 28th day of November, 2007.

/s Lynn Adelman

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LYNN ADELMAN  
District Judge